



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Thomas & Sons Building Contractors, Inc.

File: B-238674

Date: May 10, 1990

Ruth E. Ganister, Esq., Rosenthal and Ganister, for the protester.
Vasio Gianulias, Esq., and Vicki E. O'Keefe, Esq., Office of the General Counsel, Department of the Navy, for the agency.
John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that Small Business Administration's (SBA) denial of certificate of competency was based on incorrect information provided by agency is denied where record indicates that information considered by the contracting officer and forwarded to SBA was accurate.
2. Protest that agency's nonresponsibility determination and subsequent refusal of the Small Business Administration to issue a certificate of competency was erroneous in light of new information submitted by the protester is denied where record does not show that any new information was presented.

DECISION

Thomas & Sons Building Contractors, Inc., protests the award of a contract to any other offeror under invitation for bids (IFB) No. N62472-89-B-5339, issued by the Department of the Navy for repairs to an airplane hangar truss system. Thomas objects to the Navy's nonresponsibility determination and subsequent refusal of the Small Business Administration (SBA) to issue a certificate of competency (COC).

We deny the protest.

The hangar repairs under the IFB included additional bolt installations at wood truss junctures, replacement or installation of multiple member joint structural support clamps, and replacement of entire structural members. Much of the work is to be performed at elevations of between

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60 and 150 feet, requiring the use of various types of high-reach equipment. The government estimate for the work was \$279,000; Thomas submitted the low bid of \$159,000. The Navy commenced a pre-award survey of Thomas on October 20, 1989. Although Thomas verified its price and appeared to understand the scope of the work, the contracting officer found that Thomas' references indicated a history of late completion of projects and a lack of specific experience with elevated structural work. Based on this information and the difference between Thomas' bid and the government estimate, the contracting officer determined Thomas, a small business, to be nonresponsible. Accordingly, on January 12, he referred his nonresponsibility determination to SBA for a COC review. After Thomas provided SBA with additional information concerning its responsibility, SBA denied a COC on February 9. Thomas protested the matter to our Office on February 20.^{1/}

As a preliminary matter, the SBA, and not this Office, has the statutory authority to review a contracting officer's findings of nonresponsibility and to conclusively determine a small business concern's responsibility through the COC process. Fastrax, Inc., B-232251.3, Feb. 9, 1989, 89-1 CPD ¶ 132. In a case where SBA denies a COC, our review is limited to determining whether the denial was made as a result of bad faith on the part of government officials or a failure to consider vital information bearing upon the firm's responsibility. Id.

Thomas asserts that SBA's denial of a COC was based upon substantially incorrect information provided it by the Navy, and thus implies that the Navy acted in bad faith. Thomas primarily argues that, contrary to the contracting officer's finding, the firm has the required experience with complex structural repairs, and that this fact was neither considered by the Navy nor offered to SBA. In support of

^{1/} In addition to the responsibility matter, Thomas alleged that award should not be made to any other bidders as all other bid prices were unreasonable. Thomas did not maintain this argument in its comments on the agency report, failing to address the agency's response. We therefore deem this issue abandoned and will not consider it. See Universal Hydraulics, Inc., B-235006, June 21, 1989, 89-1 CPD ¶ 585.

its position, Thomas points out that the proposed project manager has significant experience in truss work, including truss work on the very hangar to be repaired under this contract, and that this information was provided to the Navy. Thomas concludes that the Navy did not accurately represent this fact to SBA. Thomas also disputes the Navy's characterization to SBA of its performance on prior contracts.

The record does not support Thomas' position. The Navy states, and Thomas does not dispute, that structural repairs of the sort contemplated here are highly specialized and require specific experience in that type of work. While Thomas' project manager had done truss work for a different contractor on the same hangar involved here, Thomas itself has presented no evidence of such specialized structural experience; when Thomas was asked to provide references relating to structural experience, it provided none. Moreover, the record clearly shows that the previous repairs to the hangar were not completed in a satisfactory manner. Regarding Thomas' performance on other contracts, the references provided by Thomas and checked by the Navy indicate several instances of late completions, delivery problems, and mismanagement of subcontractors.

While the Navy may not have described Thomas' experience or performance history to SBA in such a manner as to place Thomas in the most favorable light, it was not required to do so; rather, the burden was on the firm to prove through the COC process that it is responsible. Fastrax, Inc., B-232251.3, supra. We find nothing erroneous in the Navy's characterization of Thomas to SBA as lacking specialized experience or an adequate performance history, and conclude that Thomas has not shown that the Navy acted in bad faith in referring the nonresponsibility determination to SBA.

In reviewing cases where COCs were denied, we have recognized that contracting officers may reconsider nonresponsibility determinations after denial of a COC when new information comes to light indicating that the deficiencies may have been cured. See Eagle Bob Tail Tractors, Inc., B-232346.2, Jan. 4, 1989, 89-1 CPD ¶ 5. Thomas argues that it presented the agency with new information, after denial of its COC, that warrants reversal of the nonresponsibility determination. We find no support for this argument. By Thomas' own account, it presented all information concerning its responsibility to the agency and

to SBA before SBA denied the COC. Its assertion now to the contrary notwithstanding, Thomas has not offered any new information bearing on its responsibility.

The protest is denied.

for Ronald Berger
James F. Hinchman
General Counsel